

Testimony of the Honorable Cedric L. Richmond, Member of Congress  
United States House of Representatives Committee on Oversight and Government Reform,  
“Criminal Justice Reform”  
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9:45 A.M.

Chairman Chaffetz, Ranking Member Cummings, and Members of the Committee, thank you for the opportunity to be here. For too long, America has prided itself on being “tough on crime.” When it comes to public safety and criminal justice, we have long attributed success to the number of people we place behind bars. This woefully misguided approach has led to families and communities being torn apart, state budgets being stretched thin, and a generation of able-bodied and potentially productive citizens being lost in the system. As “tough on crime” grew from a catch phrase to the dominant philosophy in American criminal justice, our prison populations have exploded. According to the U.S. Bureau of Justice Statistics (BJS), 2,266,800 adults were incarcerated in U.S. federal and state prisons, and county jails at year-end 2011. The American inmate population has grown so large that it is difficult to comprehend: imagine the combined populations of Salt Lake City, Baltimore, Orlando, St. Louis, Dayton, and Washington D.C.. Additionally, 4,814,200 adults at year-end 2011 were on probation or on parole. That number exceeds the population of my home state of Louisiana.

This has been an issue of tremendous importance to me long before I came to Congress. Prior to coming to Washington, I practiced as a criminal defense attorney in my hometown of New Orleans. I also served on the Judiciary Committee of the Louisiana State Legislature for several years, a stint which included time as that committee’s chair. In that time, I witnessed firsthand the truly appalling outcomes of our draconian criminal laws. There is no clearer illustration of the phenomenon of mass incarceration than my home state. According to the Bureau of Justice Statistics, Louisiana currently holds over 39,000 people in state and federal prisons. That number represents 1 out of every 118 Louisianans. Not only is that the highest incarceration rate of any state in the country, it’s the highest incarceration rate in the world. Put simply, I have spent the last 15 years as a resident and a representative of the prison capital of the world.

The things I experienced in that time have informed and inspired my work as an avid proponent of criminal justice reform since coming to Congress in 2011. In my time as a Member of Congress and this esteemed Committee, I have put forth proposals aimed at reducing the number of juveniles who are incarcerated and develop a criminal record based on activity that occurs in schools. I have advanced legislation calling for the development and implementation of national standards for the use of solitary confinement

to ensure that it is used infrequently and only under extreme circumstances. I have also pushed for greater oversight and accountability of law enforcement agencies at the federal, state, and local levels.

In addition to the proposals I, myself, have introduced, I have also supported proposals put forth by my colleagues aimed at addressing a number of issues throughout the criminal justice system. These have included efforts aimed at reducing recidivism and creating programs to prepare convicts for a world after incarceration; addressing the needs of at-risk youth and youth who come into contact with the justice system; reducing the use of force by law enforcement officials and promoting community policing tactics; and doing away with mandatory minimums for convicted drug offenders. While the problems in our current system are complex and wide-reaching, I'm encouraged by the efforts already put forth by my colleagues as well as the commitment demonstrated by the leaders of this Committee. Many of our home states have taken significant steps towards ending the era of mass incarceration, and I have no doubt that the will exists for the Members of this great body to do the same.

### **School-to-Prison Pipeline**

The issues in our justice system start long before the point of conviction or even arrest. The use of policies and procedures that criminalize minor student misbehavior has turned many schools into "pipelines to prison." Research has shown that punishing students through the criminal justice system has a profoundly negative effect on the children involved that lasts long after they are out of school. Juveniles that have been incarcerated are much more likely to become criminals later in life and much less likely to achieve economic success. Therefore, all of us who care about building strong, prosperous communities must do everything we can to ensure that involving our youth in the criminal justice system is used as a last resort, not as a routine first response. The "school-to-prison pipeline" is a complex issue that requires a coordinated response from all levels of government and all stakeholders who care about juvenile justice.

I recently re-introduced The *Student Disciplinary Fairness Act* which would give schools the tools they need to be schools instead of "pipelines to prison." The bill would devote federal resources to preventing the overuse of the criminal justice system for activity that takes place in school settings. It would create an office in the U.S. Department

of Justice to collect data and develop alternatives to the use of the criminal justice system by schools. It also creates a grant program in the U.S. Department of Education to fund training for teachers and administrators in de-escalation techniques for mitigating delinquent student behavior without the involvement of law enforcement. By providing tools to everyone involved at all levels of this issue, my bill presents a comprehensive approach to addressing this complex problem.

### **Solitary Confinement**

We must also reform how we approach solitary confinement, the current administration of which is immoral and likely unconstitutional. There is no doubt that inmates must pay their debts to society. However, these are still human beings, and if we treat them as less than human beings, what kind of country are we? There are juveniles and mentally ill inmates being put in solitary confinement, because it is convenient for prison officials. The tragic case of Kalief Browder has shown us all too recently how harmful these practices can ultimately be. We must respect the challenges corrections officers face and what they go through to house the nation's offenders, but we must also make sure that the systems they have in place are humane. Putting people in a box for years, sometimes decades, with limited oversight and human interaction is simply wrong.

In addition to the moral imperative, current practices of subjecting prisoners to indefinite or effectively permanent solitary confinement without meaningful periodic review of the assignment to solitary raises serious constitutional concerns. The psychological and physiological impact of this detention could easily amount to cruel and unusual punishment in violation of the 8<sup>th</sup> Amendment. Additionally, the Supreme Court has held that prisoners in long term solitary confinement must be afforded "meaningful periodic review" of their status. Unfortunately, what we've seen is some prison authorities engaging in "sham" reviews in which the outcome is predetermined so as to simply keep prisoners in long term solitary on a semi-permanent basis. This raises significant questions relating to procedural due process as required by the 6<sup>th</sup> and 14<sup>th</sup> Amendments. Furthermore, lower courts have held that long term indefinite detention is unconstitutional as applied to inmates with "serious mental illness" before they were subject to solitary.

In the coming weeks, I will reintroduce the *Solitary Confinement Study and Reform Act*. The bill starts a national conversation about solitary confinement by bringing all

relevant stakeholders to the table to explore options on how to improve the system. It sets up a national commission which will study the issue with significant stakeholder input and issue a study on the topic as well as a set of best practices which DOJ will consider in issuing a separate and independent set of rules for Federal prisons to follow. The Bill also creates strong financial incentives for non-federal prison and jail facilities to comply with whatever DOJ will come up with or begin a process that puts them on a road to compliance. This bill aims to promote reforms to how solitary confinement is done in America and to bring the practice more into line with our nation's values and the U.S. Constitution.

### **Ban the Box**

The potential for improvements in our system extends beyond the point a prisoner is released. The struggle to find and keep a job after release is a crucial element of the reentry process. It is an important part of becoming a productive member of the community and assists in developing personal responsibility and gaining independence and self-reliance. Research by the Bureau of Justice Statistics shows high recidivism rates among former prisoners in the first year after release: 44 % are rearrested, 22 % reconvicted, and 10 % returned to prison on a new sentence. However, not all return to a life of crime. Some former prisoners successfully reintegrate and avoid recidivism. Studies have shown that former prisoners who are able to secure a job, ideally at higher than minimum wage, within two months after their release are much more likely to successfully avoid recidivism.

However, the hiring process itself is a large hurdle for most returning prisoners. Due to high rates of criminal background checks and questions on job applications about an applicant's record, ex-convicts have a very hard time finding employment. This effect is much greater for non-white ex-convicts. A 2003 study published in American Journal of Sociology found that White applicants with a criminal history were half as likely to receive a call back from potential employers as applicants with no criminal record. Black applicants with a criminal record were three times less likely to receive a call back. Many states, such as Virginia, California, Georgia, and Ohio have decided to stop asking about criminal records on applications for certain job positions. Giving employers the opportunity to meet and speak with job applicants before discovering their criminal history has the potential to improve job outcomes for former prisoners.

Taking a cue from the states, I will be introducing legislation to “ban-the-box” from applications for federal employment. This legislation would prohibit an agency from performing a background check until either the applicant has been selected for an interview by the agency; the agency determines that the applicant is a finalist for the position; or a conditional offer of employment is made to the applicant. This is not about giving preference to ex-cons when it comes to jobs. Agencies will still retain the right to consider a person’s criminal history in making a hiring decision. The concern is that some employers cast an overly broad net banning formerly incarcerated applicants altogether. It’s important that people have an opportunity to apply and be considered for jobs when they are qualified and when their criminal record is not relevant or occurred long enough in the past to no longer be a significant factor in predicting future behavior.

### **Occupancy Guarantees**

In addition to revising our criminal statutes, we must also examine the role administrative decisions have played in growing our incarcerated population. The private prison industry has successfully promoted policies and practices that increase the number of people who enter and stay in prison. By contractually requiring states to guarantee payment for a large percentage of prison beds, the prison companies are able to protect themselves against fluctuations in the prison population. These provisions guarantee prison companies a consistent and regular revenue stream, insulating them from ordinary business risks. The financial risks are borne by the public, while the private corporations are guaranteed profits from taxpayer dollars.

A recent review of state prison contracts revealed that as many as 65% contain “lockup quota” provisions. These occupancy requirements were between 80% and 100%, with many around 90%. The highest bed guarantee requirements were from Arizona, Louisiana, Oklahoma, and Virginia. Arizona has three contracts that contain 100% occupancy guarantee clauses. Oklahoma has three contracts with a 98% occupancy guarantee provision, while a couple of Louisiana’s contracts contain occupancy requirements at 96%, and Virginia has one at 95%.

Colorado serves as a stark example of the harm these occupancy guarantees can cause to American taxpayers. In the past decade, Colorado’s crime rate has dropped by a third, and since 2009, five prisons have been closed. In 2012, Corrections Corporation of

America (CCA) negotiated the insertion of a bed guarantee provision in the state budget for all three of its facilities for the 2013 fiscal year. Instead of using empty bed space in its state-run facilities, the Colorado Department of Corrections housed inmates in CCA's facilities to ensure they met the occupancy requirement. Colorado taxpayers were forced to pay for the vacant state prison beds and for the per diem rate for inmates redirected to the CCA facility to fulfill the bed guarantee. The Colorado Criminal Justice Reform Coalition estimates that the deal cost the state at least \$2 million amounting to a "low crime tax." The Colorado Springs Gazette notes that the figure could be even higher.

I was troubled to find that the Bureau of Prisons uses similar incentives in its contracts for privately operated federal prisons. In January 2007, for example, BOP awarded a contract to The GEO Group, Inc. (the GEO Group) to operate the Reeves County Detention Center in Reeves County, Texas. BOP monthly payments to Reeves County are primarily based on the Monthly Operating Price (MOP) and the Fixed Incremental Unit Price (FIUP). The MOP ensures that the contractor receives a minimum payment, regardless of the facility's actual population, and was negotiated with the understanding that BOP inmates would occupy at least 90% of the accepted number of "contract beds." The FIUP pricing component is a separate unit price per inmate that only applies when the daily population of inmates exceeds 90% of contract beds in a payment period, up to 115% of contract beds. While this is not a "lock-up quota" per se, it does in fact provide a financial incentive to fill beds with inmates. The very possibility that profit-motives could in any way take precedent over public safety and equitable justice is problematic. Unfortunately, very little is known about BOP's contracting procedures at this point. Over the course of the next few months, I will examine this issue further and explore the possibility of advancing legislation prohibiting the use of occupancy guarantees in contracts for federal corrections facilities.

This moment has the potential to serve as a transformational point in our nation's history. The work we do on this issue will produce effects that are felt long after our time in Congress has passed. We must come together to thoroughly examine this issue and create solutions that improve the criminal justice system to the fullest extent possible. America is a nation that has always valued the rule of law. However, it is clear that the balance between law-and-order and freedom and liberty has swung too far in the wrong

direction. I look forward to working with my colleagues on this Committee and in Congress to restore the proper balance and create a system that produces equitable outcomes for all Americans.